

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MONRELL DONOVAN MURPHY,

Plaintiff,

v.

FLORES,

Defendant.

Case No. 1:23-cv-00740-ADA-BAM (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS
(ECF No. 8)

ORDER DIRECTING CLERK OF COURT TO
RE-SERVE SCREENING ORDER ON
PLAINTIFF
(ECF No. 6)

ORDER DIRECTING PLAINTIFF TO FILE
AMENDED COMPLAINT OR NOTIFY
COURT OF WILLINGNESS TO PROCEED
ON COGNIZABLE CLAIM

THIRTY (30) DAY DEADLINE

Plaintiff Monrell Donovan Murphy (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On July 7, 2023, the Court screened the complaint and granted Plaintiff leave to file an amended complaint or notify the Court of his willingness to proceed on the cognizable claims identified within thirty days. (ECF No. 6.) The order was served on Plaintiff at his current address of record. On July 19, 2023, the Court’s order was returned as “Undeliverable, Not Deliverable as Addressed.” The deadline for Plaintiff to respond to the Court’s screening order expired, and Plaintiff did not file a notice of change of address or otherwise communicate with

1 the Court.

2 Accordingly, on October 10, 2023, the undersigned issued findings and recommendations
3 to dismiss this action, without prejudice, for failure to obey a court order and failure to prosecute.
4 (ECF No. 8.) Plaintiff was directed to file any objections to the findings and recommendations
5 within fourteen (14) days. (*Id.*)

6 Currently before the Court are Plaintiff's objections to the findings and recommendations,
7 filed October 20, 2023. (ECF No. 9.) Plaintiff states that he has never changed addresses, and
8 did not receive the July 7, 2023 screening order. Plaintiff does not know why the order was not
9 delivered to him, as he received the Court's findings and recommendations at the same address.
10 Plaintiff believes that any oversight was on the part of either prison officials or the U.S. Postal
11 Service, and therefore prays for relief pursuant to Federal Rule of Civil Procedure 60(b)(1). (*Id.*)

12 Having considered Plaintiff's objection, the Court finds it appropriate to vacate the
13 pending findings and recommendations. As such, any request for relief pursuant to Federal Rule
14 of Civil Procedure 60 is denied as unnecessary.

15 The July 7, 2023 screening order will be re-served on Plaintiff at his current address of
16 record, and the deadline for Plaintiff to comply with that order is extended accordingly.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations issued on October 10, 2023, (ECF No. 8), are
19 VACATED;
- 20 2. The Clerk of the Court is directed to re-serve the July 7, 2023 screening order, (ECF No.
21 6), and a civil rights complaint form on Plaintiff;
- 22 3. Within **thirty (30) days** from the date of service of this order, and in compliance with the
23 guidance provided in the Court's July 7, 2023 screening order, Plaintiff SHALL either:
 - 24 a. File a first amended complaint curing the deficiencies identified by the Court in
25 the July 7, 2023 screening order (or file a notice of voluntary dismissal); or
 - 26 b. Notify the Court in writing that he does not wish to file a first amended complaint
27 and he is willing to proceed on his cognizable claims against Defendant D. Flores
28 for excessive force in violation of the Eighth Amendment and for retaliation in

violation of the First Amendment; and

4. **Plaintiff is warned that the failure to comply with this order will result in dismissal of this action, without prejudice, for failure to obey a court order and for failure to prosecute.**

IT IS SO ORDERED.

Dated: **October 23, 2023**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE